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In The

Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG
and DELPHINE WONG,

Petitioners,

v.

CITY COUNCIL OF THE CITY OF
CARSON, PLANNING COMMISSION
OF THE CITY OF CARSON,

Respondents.

**On Petition For A Writ Of Certiorari
To The Court Of Appeal,
Second Appellate District, Division One**

BRIEF AMICUS CURIAE OF WESTERN MOBILEHOME PARKOWNERS ASSOCIATION IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is the City of Carson's Administrative Resolution No. 91-014, which conditions the City of Carson's issuance of a permit to terminate month-to-month tenancies and close the Avalon-Carson Mobile Home Park on the owners' payment of more than $1.4 million to park tenants for mobilehome coaches, moving expenses, dislocation fees, and stipends for low income seniors and disabled tenants, a regulatory or physical taking, or both, under the Fifth Amendment of the United States Constitution?

2. Does the City of Carson's Administrative Resolution No. 91-014, which functionally requires the parkowner to refund to tenants all of the profits the parkowner has made, violate substantive due process in that it unreasonably deprives parkowners of their "fair return" to which they are entitled under Carson's Rent Control Ordinance?

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Western Mobilehome Parkowners Association (WMA) respectfully submits this brief amicus curiae in support of petitioners Darryl Wong, Willie Wong and Delphine Wong (Wongs). Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of the Court.

WMA is a duly constituted nonprofit, statewide organization that was founded in 1945 to represent the interests of mobilehome park owners, operators, and residents in California. WMA has approximately 1,800 members who provide the public with approximately 180,000 mobilehome rental spaces. WMA advocates and defends the interests of its members in matters regarding the extent and propriety of state and local regulation of mobilehome parks. In defense of its members' interests WMA appeared as amicus curiae in ***Yee v. City of Escondido***, 503 U.S. 519, 118 L. Ed. 2d 153 (1992).

This amicus will argue first that the Wongs have a right to go out of business, a "liberty" interest protected by the Fourteenth Amendment. Second, this amicus will argue that the onerous conditions of Resolution No. 91-014 adopted by the City of Carson (City) has deprived the Wongs of their protected right to go out of business. The City has failed to show a compelling need or any need whatsoever to infringe on this liberty interest. Last, this amicus will argue that the Just Compensation Clause of the Fifth Amendment mandates that when private property is "taken" by excessive regulation, the property owner must be compensated. If, as in this case, a property owner is denied the ability to go out of business because of onerous conditions placed on his or her application so as to bestow a benefit on the public as a whole, justice and fairness require that the public as a whole

bear a reasonable share of the costs associated with that benefit.

WMA's public policy perspective in support of private property rights of park owners will help provide this Court with a more complete perspective of the interests at stake which militates for granting the Petition for Writ of Certiorari.

OPINION BELOW

The opinion of the Court of Appeal for the Second Appellate District, State of California, is not published. A copy of the opinion is reproduced in the Petition for Writ of Certiorari, Appendix 1.

STATEMENT OF THE CASE

In June, 1979, the Wongs bought the Avalon-Carson Mobile Home Park in the City of Carson, California. The park consists of 172 mobilehome and recreational vehicle spaces, most of which are leased to mobilehome owners for a monthly rental fee. Administrative Record (AR) 106, 6535. The purchase price of the park was $1.7 million. The Wongs put $500,000 down and obtained a $1.2 million loan. AR 7, 161. The park is located in the center of the City on land zoned for commercial-regional center, commercial general, and residential multiple dwelling use. AR 106, 6536.

Approximately one month after the Wongs purchased the park, a rent control ordinance went into effect setting the maximum rent which could be charged for any particular space at the level of rent charged for the space on May 1, 1979. After the Wongs concluded that they could no longer afford to continue operating the mobilehome park under the City's restrictive rent control regulations, they applied to the City for permission to close the park. AR 52. At the time the Wongs had no plans for an alternative use of their land other than "vacant use." AR 46, 96, 112. They desired simply to go out of the mobilehome park business.

Mobilehome parks in California are a heavily regulated industry. Park owners seeking to convert their property to another use must comply with California Government Code §§ 65863.7 and 65863.8 and other provisions. California Government Code § 65863.7 required the Wongs to file a relocation impact report (RIR) setting forth "the impact of ... closure, or cessation of use [of the land as a mobilehome park] upon the displaced residents." This sections provides authority for local government, as a condition of its permission to close a mobilehome park, to require the park owner to "take steps to mitigate any adverse impact of the ... closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park." Cal. Gov't Code § 65863.7(e).

The City agreed to the Wongs' proposed closure only upon the condition that they comply with "mitigation" measures set forth in Resolution No. 91-014. Petition for Writ of Certiorari, Appendix 23. The City directed the Wongs to pay the residents of their mobilehome park over $1.4 million in cash payments as the price for permission to close the park and go out of business. The City's price for allowing the Wongs to go out of business exceeds all of the profit the Wongs have earned on space rentals during their entire 16 year ownership of the park. Petition for Writ of

Certiorari at 20. By requiring mitigation payments of over $1.4 million, the City has put the Wongs in the classic catch-22 situation. They cannot afford to stop operating the park and they cannot afford to continue to do so.

Nothing else is involved in this case. The Wongs have not requested approval for any other use of the property nor have they asked the City for any other form of discretionary approval. The Wongs are no transient profiteers seeking to turn a fast buck at the expense of the City and the park residents. They invested a substantial amount of their personal resources in a business operation which the City apparently concedes is of significant value to the City. They have struggled for 16 years under the City's strict rent controls to try to make the operation of the mobilehome park a reasonable economic venture. Only after many years of effort did they conclude that continuing the struggle made no sense. They made the difficult decision to close the park and walk away from the significant investment that the mobilehome park represents only to be forced to remain a landlord or to pay what amounts to a ransom to recover their constitutional right to go out of business.

SUMMARY OF ARGUMENT

In requiring mitigation payments to tenants exceeding $1,471,654.00, the City of Carson requires the Wongs to refund over 29 years of the present net operating income to the tenants as a condition of the City's permission to go out of business. This condition is an unconditional infringement of the Wongs' liberty rights because it has effectively prevented them from going out of the mobilehome park business. Any justification advanced by the city for a condition which places such an onerous burden on this

fundamental personal freedom must be compelling and utilize the least restrictive means. The condition is apparently designed to protect the tenants' investments in their mobilehomes and to require the park owner to contribute money towards tenants' relocation before closing the park. The purpose of this condition is simply to transfer wealth from the landlord and place it in the hands of the tenants. The result of this condition is to place an onerous burden on the right of the Wongs to go out of business. This condition deprives the Wongs of their property without due process of law because the mitigation conditions do not serve a valid purpose. The purpose is to protect the tenants' investment in their mobilehomes at the expense of the Wongs' right to terminate the monthly tenancies and possess, use and dispose of their property.

The City of Carson's aim in adopting Resolution No. 91-014 may be to create affordable housing for senior, disabled and low income families. However, the City cannot force the Wongs to shoulder this societal burden by effectively and economically denying them the right to go out of business. The Wongs are not responsible for the scarcity of mobilehome rental spaces, or the general lack of low cost housing, or the low income status of mobilehome park residents. Forcing the Wongs alone to bear the full cost of what amounts to a social welfare program is forcing the Wongs "alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." ***Armstrong v. United States***, 364 U.S. 40, 49 (1960).

ARGUMENT

I

RESOLUTION NO. 91-014 DEPRIVES THE WONGS OF THE RIGHT TO GO OUT OF BUSINESS, A "LIBERTY" INTEREST PROTECTED BY THE FOURTEENTH AMENDMENT

The record clearly shows that the Wongs sought to remove themselves from the occupation of providing mobilehome rental space and on that basis sought permission from the City to close the park and go out of business. The California Court of Appeal in one sentence flatly denied the existence of a constitutional right to go out of business. Petition for Writ of Certiorari, Appendix 4. This bald statement shows the lack of understanding of this infrequently addressed liberty interest. Thus, this case presents the Court with the opportunity to define the scope of this constitutional liberty when an individual attempts to withdraw from a regulated occupation.

The right to go out of business is closely related to the right of the individual "to engage in any of the common occupations of life" which is protected by the liberty guaranteed under the Fourteenth Amendment to the United States Constitution. ***Meyer v. Nebraska***, 262 U.S. 390, 399 (1923). In fact, the right to go out of business is a logical concomitant of the right to choose a new occupation. It is inherently logical that the government may not force an individual to engage in a particular calling. Regulation, by definition, does not include any notion of forcing the one regulated to participate in a particular enterprise. ***Yee v. City of Escondido***, 118 L.Ed. 2d at 165.

Fundamental rights not explicitly delineated in the Constitution of the United States can only be determined and defined by examining the importance of the activity in light of relevant social and legal history underlying the right at issue. ***Einsenstadt v. Baird***, 405 U.S. 438, 453 (1972). The right to go out of business is a personal freedom protected within the "liberty" of the Fourteenth Amendment.

Liberty guarantees in the federal constitution have their roots in Section 39 of the Magna Carta: That no person ought to be taken, imprisoned or disseised of his freehold, or to be outlawed or exiled or in any way harmed save by the lawful judgment of his peers or by the law of the land.

The debates in Congress on the first ten amendments included discussion of a clause protecting "the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety." James Madison, House of Representatives debates on Federal Bills of Rights, Monday, June 8, 1789.

Following the ratification of the Fourteenth Amendment in 1868, the United States Supreme Court repudiated the notion of a due process liberty that only guaranteed freedom from physical restraint. In ***Allgeyer v. Louisiana***, 165 U.S. 578 (1897), the Court held that "[t]he 'liberty' mentioned in that [Fourteenth] amendment ... is deemed to embrace the right of the citizen ... to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation ...." ***Id.*** at 589. Over the next half century the Court began the "gradual process of judicial inclusion and exclusion" (***Davidson v. New Orleans***, 96 U.S. 97, 104 (1877)), with every decision falling within the former category. ***See, e.g., Butler v. Perry***, 240 U.S. 328, 333 (1916). ***Meyer v. Nebraska***, 262 U.S. 390, represented both an expansion of liberty rights and a summary of their development:

> "[Liberty denotes] ... the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." ***Id.*** at 399 (citations omitted).

Over the years the liberty of the due process clause has become a general right of private autonomy or, more specifically, a right to be let alone. The courts have focused upon the adequacy of the state's justification for interference with a recognized liberty interest, and not upon the question of whether the interest exists in a particular case. In any event, it is now undeniable that "[i]n a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564, 572 (1972).

The right to go out of business or, more precisely, the right not to be compelled by the state to remain in a particular business, is very similar to the right to work in any of the common occupations of the community. In ***Munn v. Illinois***, 94 U.S. 113, 142 (1876), Justice Field stated that liberty

> "means freedom to go where one may choose, and to act in such a manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment." ***Id.*** at 142 (Field, J. dissenting).

This is perhaps the earliest formulation by a member of this Court of the due process right to work in the field

one chooses. In the instant case, the Wongs made the decision to go out of business. The City of Carson decided to make it clear that the Wongs could not afford to go out of business by requiring mitigation payments of over $1.4 million. The City's price for going out of business greatly exceeds all of the profit the Wongs have earned on space rentals during their entire ownership of the park. Resolution No. 91-014 requires the Wongs to refund over 29 years of the present net operating income to the tenants. Petition for Writ of Certiorari at 25. Those conditions effectively prevent the Wongs from choosing ***not*** to be park owners any longer in violation of the Due Process Clause of the Fourteenth Amendment.

The notion of forcing an individual into a particular role in a regulatory scheme because doing so would benefit the public is completely alien to American jurisprudence. Courts have always allowed states to impose strict rules on those who wish to "play the game." It is, however, unprecedented to force someone to participate. As stated by this Court in ***Textile Workers v. Darlington Manufacturing Company***, 380 U.S. 263 (1965):

> "A proposition that a single businessman cannot choose to go out of business if he wants to would represent such a startling innovation that it should not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent." ***Id.*** at 270.

In ***Robinson v. Diamond Housing Corporation***, 463 F.2d 853 (D.C. Cir. 1972), the court stated:

> "None of this is to say that the landlord may not go out of business entirely if he wishes to do so or that the jury is authorized to inspect his motives if he chooses to commit economic

> hara-kiri. There would be severe constitutional problems with a rule of law which required an entrepreneur to remain in business against his will." ***Id.*** at 867.

This statement is a clear indication that the federal courts would view a rule of law which allowed individuals to be forced to remain in a particular business to be constitutionally defective. Yet, the California Court of Appeal in the instant case flatly denied the existence of a constitutional right to go out of business. Petition for Writ of Certiorari, Appendix 4. The court cites to ***Nash v. City of Santa Monica***, 37 Cal. 3d 97 (1984). In ***Nash***, the California Supreme Court held that any constitutionally protected interest the property owner had to go out of business was outweighed by the state's interest in protecting the supply of affordable housing. 37 Cal. 3d at 99. But even the court in ***Nash*** recognized that a high degree of constitutional protection should be afforded one's choice of whether to remain in a particular business. 37 Cal. 3d at 100, 103-04.

The Wongs have made the decision to go out of business rather than continue to try to operate a mobilehome park subject to the rent board's regulations. If the government could, under the police power, choose which enterprise a person will participate in, that government would denigrate the broad constitutional liberty guarantees that we enjoy as citizens of the United States.

II

THE CITY OF CARSON HAS FAILED TO DEMONSTRATE A PROPER PURPOSE TO IMPOSE EXCESSIVE CONDITIONS ON THE WONGS' RIGHT TO GO OUT OF BUSINESS

The Fourteenth Amendment to the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. 14, § 1. "[T]he Due Process Clause [of the Fourteenth Amendment] contains a substantive component that bars "arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" ***Zinermon v. Burch***, 494 U.S. 113, 125 (1990) (citation omitted); ***Daniels v. Williams***, 474 U.S. 327, 331 (1986). This substantive component "reach[es] abuses of [city government] that are forbidden by the State's statutes." ***Zinermon v. Burch***, 494 U.S. at 124.

As discussed in Part I above, the City of Carson has infringed on the Wongs' fundamental right to go out of business. Whenever a state infringes upon a fundamental liberty interest, the reviewing court must apply the strict scrutiny standard of review. ***Shapiro v. Thompson***, 394 U.S. 618, 634 (1969). The state has the burden of showing a compelling interest supporting the legislation (***Roe v. Wade***, 410 U.S. 113, 155 (1973)), and further must demonstrate that the least restrictive means available were used to accomplish its purpose. ***Cleveland Board of Education v. LaFleur***, 414 U.S. 632, 644 (1974). Here, the City of Carson by adopting Resolution No. 91-014 has imposed excessive conditions on the Wongs' exercise of their fundamental right to go out of business. This is constitutionally impermissible absent a compelling interest, which, as discussed below, does not exist. Yet even under

the "rational relationship" test normally used in examining the validity of property regulations, Resolution No. 91-014 fails.

A. The Due Process Clause Protects Against Arbitrary and Capricious Governmental Action

This Court has long held that even the police power has its limits. The classic statement of the parameters of the police power was made by this Court in ***Lawton v. Steele***, 152 U.S. 133,137 (1894):

> "To justify the state in thus interposing its authority in behalf of the public, it must appear--First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

This statement has been reaffirmed many times by the Court. ***See Goldblatt v. Town of Hempstead***, 369 U.S. 590, 594-95 (1962). The government has no power, under the guise of police regulation, arbitrarily to invade the personal rights and personal liberty of the individual citizen. The police power, however broad and extensive, is not above the Constitution.

While the Court is not cast in the role of a superlegislature, there remains a need for review of both the purpose and the means chosen. "[O]ur cases have not departed from the requirement that the government's chosen means must rationally further some legitimate state purpose." ***Moore v. East Cleveland***, 431 U.S. 494, 498 n.6 (1977). Moreover, the vitality of the substantive due process clause exists in an economic context. In ***Lynch v. Household Finance Corporation***, 405 U.S. 538, 551 (1972), this Court stated:

> "Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized."

In the instant case, the public purpose as well as the means to achieve the public purpose must be questioned.

B. Resolution No. 91-014 Is Irrational and Unfairly Requires the Wongs to Bear a General Public Burden

The City of Carson's Resolution No. 91-014 is irrational and does not serve a legitimate governmental purpose. The stated purpose of Resolution No. 91-014 is set forth in Section 4D thereof.

> "The purposes of the Rent Control and RIR Ordinance are to protect the mobilehome owners who rent spaces in mobilehome parks from excessive rents and to protect their considerable investment in their mobilehomes, which includes the cost of improvements and maintenance (as well as financing) and to protect their ability to afford replacement housing, upon the closure of a park. The ordinances are also intended to permit park owners a fair profit and to allow them to change the use of the property without incurring unreasonable burdens." Petition for Writ of Certiorari, Appendix 32.

Simply stated, the purpose of Resolution No. 91-014 is to transfer wealth from the mobilehome park owner to the park tenant and to protect the tenant's ability to afford replacement housing. It cannot be seriously argued that the transfer of wealth from the mobilehome park owner to a special interest class constitutes a valid public purpose. If the City of Carson wants to subsidize a special interest class, it should pay for the subsidy out of the City's general fund, not from the pockets of the mobilehome park owner.

Moreover, even if the City should argue that the public purpose of Resolution No. 91-014 is to create affordable housing for seniors, disabled and low income families, which is a laudable aim, the means employed by the City to achieve this purpose must be questioned.

The desire of the City of Carson to provide affordable housing to its residents does not justify placing such onerous conditions on the Wongs that they are effectively and economically prevented from going out of business. The problem of lack of affordable housing is a societal problem. The City's conditions unfairly single out the Wongs to shoulder the burden of the general unavailability of affordable housing. Resolution No. 91-014 unduly burdens the Wongs' right to terminate the monthly tenancies and possess, use and dispose of their property.

In ***Guimont v. Clarke***, 121 Wash. 2d 586 (1993), the Washington Supreme Court held unconstitutional a requirement that owners of mobilehome parks provide relocation assistance to tenants if the owner closes the park.[1]

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[1] The Washington relocation assistance statute at issue in ***Guimont v. Clarke*** required the owners of mobilehome parks to pay each tenant between $4,500 and $7,500 (depending on the amount of notice, nature of the mobilehome, (continued)

The state court ruled that the statute violated the owners' substantive due process rights under the Fourteenth Amendment. After finding that the state has a legitimate interest in addressing the relocation expenses incurred in mobilehome park closings, it examined the fairness of imposing the burden on the owner. The court noted:

> "Mobile home parks provide a source of low-cost housing for the elderly and those with low incomes. These people often cannot afford relocation costs. Yet by requiring the closing park owner to pay these costs, which can amount to extremely high sums of money, the State is placing the burden of solving housing problems on the shoulders of a few. ... While the closing of a mobile home park is the immediate cause of the need for relocation assistance, it is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary. An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem." *Id.* at 610-11.

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and other factors) as relocation assistance if the park owner wanted to close the park or convert it to another use. Two-thirds of the payment could come from a state fund to be accumulated from a tax on mobilehome transfers, but the park owner could be liable for the full amount if the fund contained insufficient funds. 121 Wash. 2d at 591-92.

In the case at bar, the Wongs have been providing affordable housing to the City's residents. Using their land as a mobilehome park has not caused a lack of affordable housing in Carson or caused the low income status of its tenants. Lack of affordable housing and the inability of low income tenants to afford relocation costs are public conditions which should be borne by society as a whole. Instead, the City has singled out the Wongs to bear the full costs of what amounts to a social welfare program. The City has placed on the Wongs a staggering $1.4 million price tag for going out of business. Resolution No. 91-014 is unduly burdensome on the Wongs' right to enjoy, use, and dispose of their property. As this Court stated in ***Lucas v. South Carolina Coastal Commission***, "If ... the uses of private property were subject to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." 505 U.S. 966, 120 L. Ed. 2d 798, 812 (1992) (citations omitted).

III

RESOLUTION NO. 91-014 CONSTITUTES AN UNLAWFUL TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

The Takings Clause of the Fifth Amendment to the United States Constitution provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V. This federal prohibition was extended to the states through the Fourteenth Amendment. ***Chicago, Burlington & Quincy Railroad Co. v. City of Chicago***, 166 U.S. 226 (1897). Since this Court's decision in ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. 393 (1922), land use regulations can violate the

Takings Clause if the use of property is so severely restricted as to effectively usurp private ownership rights.

This Court has repeatedly stated that land use regulations will effect a taking of property if they fail to "substantially advance legitimate state interests, or [if they] den[y] an owner economically viable use" of property. ***Agins v. City of Tiburon***, 447 U.S. 255, 260 (1980) (citations omitted). The two elements of the test are stated in the disjunctive; either is sufficient to establish a regulatory taking without further analysis In 1987, this Court in ***Nollan v. California Coastal Commission***, 483 U.S. 825 (1987), reaffirmed this two-part test. The ***Nollan*** decision clearly illustrated that when a property regulation fails to substantially advance a legitimate government interest, a taking occurs regardless of the economic impact on the property owner.

The first prong of the two-part test was clarified in ***Dolan v. City of Tigard***, 512 U.S. ____, 129 L. Ed. 2d 304 (1994). In ***Dolan***, the Court defined what level of scrutiny should be employed when applying the first prong of the ***Nollan*** test. Specifically, the Court made it clear that the level of scrutiny was above the "minimal" level.

> "We think the 'reasonable relationship' test adopted by the majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term 'reasonable relationship' seems confusingly similar to the term 'rational basis' which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment." ***Dolan***, 129 L. Ed. 2d at 320.

Next, ***Dolan*** held that the burden of proof as to whether a "legitimate government interest" is advanced lies with the government entity (***i.e.***, the City) advancing such an interest. 129 L. Ed 2d at 320. In the instant case, Resolution No. 91-014 fails to "substantially advance a legitimate state interest" under the "rough proportionality" test.

In ***Aspen-Tarpon Springs L.P. v. Stuart***, 635 So. 2d 61 (Fla. App. 1 Dist. 1994), the First District Court of Appeal of Florida struck down an ordinance similar to the City of Carson's Resolution No. 91-014 declaring "that the statute goes far beyond the legitimate goal of reasonably accommodating conflicting interests, in effect coercing mobilehome park owners to surrender indefinitely their rights to possess and occupy their land and to exclude others." 635 So. 2d at 67-68.

In finding unconstitutional the requirement for park owners to pay for relocation expenses for park residents and purchase their coaches as a condition of changing the park's use, the court stated: "A statute that requires any form of remuneration to recover the right to possess and occupy one's own property would seem to be confiscatory." 635 So. 2d at 68. This type of regulatory scheme "singles out mobilehome park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property." ***Id.***

In the case at bar, the City is requiring the Wongs to pay more than $1.4 million as a condition of closing their mobilehome park. The City's price for going out of business exceeds all of the profit the Wongs have earned on space rentals during their entire ownership of the park. Petition for Writ of Certiorari at 20. The City's ostensible purpose in imposing these conditions is "to protect the mobilehomes, which includes the cost of improvements and

maintenance (as well as financing), and to protect mobilehome owners' ability to afford replacement housing, upon closure of a park." Petition for Writ of Certiorari, Appendix 32. Clearly, the purpose of Resolution No. 91-014 is simply to transfer wealth from the park owner to the park tenant. This shifting of wealth does not comply with the "substantial advancement" test as that standard has been set forth in ***Nollan*** and ***Dolan***.

Moreover, the Just Compensation Clause of the Fifth Amendment mandates that when private property is "taken" the property owner is to be compensated. This self-executing constitutional provision must not be circumvented for expedient "policy considerations." As stated in ***Armstrong v. United States***, 364 U.S. at 49, a regulation goes too far when it "forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

In the instant case, Resolution No. 91-014 is intended to benefit the park's tenants by protecting their investments in their mobilehomes and to protect their ability to afford replacement housing. Petition for Writ of Certiorari, Appendix 32. No one would dispute that protecting affordable housing is a worthy objective; however, it does not establish that the Wongs and other park owners may be compelled to bear the full costs of such a "comprehensive program." ***Nollan***, 483 U.S. at 841.

The issue is not whether a subsidy to mobilehome coach owners is a worthy goal, but rather who should pay. "[T]he question at bottom is upon whom the loss ... should fall." ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. at 415. Here, if the City of Carson wants to subsidize mobilehome

owners, justice and fairness require that the public as a whole bear the costs associated with that benefit.

CONCLUSION

For the foregoing reasons, amicus curiae Western Mobilehome Parkowners Association respectfully urges that this Court grant the Petition for Writ of Certiorari.

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Respectfully submitted,

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